

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOEL SPIGELMAN,
Defendant.

05-CR-960 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On September 27, 2021, Defendant filed a motion requesting appointment of counsel and a sentence reduction under the First Step Act, contending that the trial court violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). (Dkt. No. 221.) On December 1, 2021, Defendant again requested appointment of counsel and a sentence reduction on the same grounds. (Dkt. No. 222.) On December 7, 2021, the Government filed a response, arguing that Defendant's motions should be denied because (1) the Second Circuit rejected Defendant's *Apprendi* claim made in his most recent Section 2255 motion and there is nothing in the First Step Act that provides a mechanism for raising an *Apprendi* claim outside of the Section 2255 procedures; (2) Defendant does not provide any support in the record that the trial court violated *Apprendi*; and (3) the application of the concurrent sentence doctrine applies so there is no reason to address the merits of Defendant's *Apprendi* claim. (Dkt. No. 224.)

The Court agrees with the Government. The Second Circuit denied Defendant's *Apprendi* claim (*see* Dkt. No. 212), and this Court is bound by the Circuit's decision. To the extent Defendant is requesting a sentence reduction pursuant to 18 U.S.C. § 3582(c)(1)(A), the motion is denied for the reasons stated in this Court's December 21, 2020 order. (Dkt. No. 205).

For the foregoing reasons, Defendant's motions for a sentence reduction are DENIED.

The Clerk of Court is directed to close Docket Numbers 221 and 222.

The Clerk of Court is directed to mail a copy of this order to Defendant.

SO ORDERED.

Dated: December 10, 2021
New York, New York



J. PAUL OETKEN
United States District Judge